TITLE VI

State Revolving Fund Program

FINAL

QUESTIONS AND ANSWERS

CUMULATIVE

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Sets 1, 2, and 3

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TITLE VI SRF PROGRAM
Draft Questions and Answers: Set 3

SUBJECT OUTLINE **Page#**

III. MAJOR LEGISLATIVE PROVISIONS AFFECTING CAPITALIZATION GRANT AGREEMENTS

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APPENDIX A

I. FISCAL AUTHORIZATIONS AND RESERVES

A. Authorization, Allotment, and Reallotment

I.A. 1) What is the definition of "the date such funds were obligated by the State" in section 601(b)(2)(A)?

A: The date on which the State executes the capitalization grant award agreement.

I.A. 2) What must a State do in order to be eligible to receive reallotted funds from a Title VI appropriation?

A: To be eligible to receive reallotted Title VI funds at the end of the two year period of availability for a particular allotment, a State must have accepted a capitalization grant award(s), equal to its full allotment of Title VI funds, during the first year of availability. In order for the SRF to receive any reallotted funds, the State must request the reallotted funds as part of a capitalization grant application, and receive the capitalization grant award prior to the expiration of the availability of the reallotted funds to that State.

I.A. 3) May deobligated or reallotted Title II funds be awarded under Title VI capitalization grants?

A: Yes. The full amount of Title II deobligations and reallotments may be transferred to a Title VI capitalization grant as a "portion of the amounts allotted" to a State for a given year, in accordance with section 205(m), regardless of either the year in which the Title II funds were originally allotted or the year in which they are deobligated or reallotted. The Agency will consider deviations from its regulatory definition of allotment in 40 CFR sections 35.915-1 and 35.2010(a) to allow this interpretation on a case-by-case basis until the Part 35 regulations can be amended to reflect this change.

I.A. 4) If a State did not establish its SRF by the end of FY 1989, will it lose its FY 89 SRF allotment?

A: No. Funds allotted for FY 1989 are available for

obligation to a State for two years. However, States with FY 1989 Title VI funds not awarded in the first year of their availability cannot receive FY 1989 funds reallotted after FY 1990. For the purposes of reallotment, the State need only to have received its capitalization and section 604(b) grants; it need not have entered into binding commitments or disbursed funds during the first year after allotment.

I.A. 5) When making a section 205(m) transfer, is the maximum percent transfer based on the year of the funds authorization or the year that the transfer occurs?

A: The allowable transfer under section 205(m) is determined by the authorized percent of the year of the allotment and is applicable during the initial two year period of funds availability. For example, Title II funds allotted during FY 1988 were subject to the 75% section 205(m) limit through the end of FY 1989 even if they were available as a result of deobligation. Beginning in FY 1990, there are no limits on the amount of Title II funds transferred into the SRF, including any deobligated or reallotted money. Title II funds originally allotted prior to FY 1987 as well as funds allotted in FYs 1987 and 1988 may now be transferred into the SRF without limit.

I.A. 6) Does the obligation of funds under section 604(b) for water quality planning affect a State's participation in reallotment of Title VI funds?

A: Yes. In order to participate in reallotment of Title VI funds, a State must receive grants for <u>all</u> funds allotted to it during the first year of availability. These funds include both those available under section 601(a) for capitalization of SRFs as well as under section 604(b) for planning purposes under sections 205(j) and 303(e).

B. Notice of Intent

I.B. 1) Can someone other than the Governor sign the Notice of Intent?

A: Yes. The State should submit evidence documenting

the Governor's delegation of authority to the requesting official along with the first notice of intent.

I.B. 2) If a State has previously submitted a Notice of Intent (NOI), does it need to notify EPA if it changes its plans for a section 205(m) funds transfer?

A: No. Although not required, States should advise the Region if their plans for transfer under section 205(m) change. At their option, States may wish to submit an amended NOI.

I.B. 3) May a State which has not previously filed a Notice of Intent (NOI) for transferring funds pursuant to section 205(m), now submit an NOI which includes transfer of funds from prior years?

A: Yes.

C. Section 205(m) Transfer of Title II Reserves

I.C. 1) Why calculate reserves against the full Title II allotment (authorization for section 205(g) purposes) if you are going to transfer all or part of the reserves to Title VI?

A: Section 205 requires the reserves to be calculated against the total allotment available to a State, not against the allotment after deducting a proposed 205(m) transfer.

I.C. 2) How is the governor's Title II 20% discretionary fund calculated when a State elects to transfer all or part of its Title II allotment for Title VI purposes?

A: Funds available under the section 201(g)(1) governor's discretionary fund should be calculated on the State's total allotment under section 205(c)(3). The State may elect to retain this amount as grants under Title II for purposes allowed by section 201(g)(1)(A) and (B) or transfer all or part of the amount to the SRF, where they may be used for these purposes. The sum of the amounts available under Titles II and VI (as a result of funds transfer) for 201(g)(1)(A) purposes should not exceed twenty percent of the 205(c)(3) allotment. [Note that because section 319 and 320 activities are directly eligible under Title VI, the governor's 20 percent set-aside only

limits the amount of the capitalization grant that can be used to fund section 319 and 320 activities which the State intends to count toward satisfying the equivalency requirement.]

1. Section 205(g) Management Reserve

I.C.1. 1) Can Construction Grant (CG) and SRF administrative funds be combined into one account?

A: No. Since the administrative costs for the CG and SRF programs paid from Federal allocations will be provided by separate grant awards (205(g) and capitalization grant awards) separate accounts must be maintained for grant accounting purposes. In addition, the SRF administrative funds must be deposited into the SRF and then spent only on administrative activities authorized under Title VI.

2. Section 205(j)(1) Water Quality and Section 205(j)(5) Non-Point Source Reserves

3. Section 201(l)(2) Advance of Allowance, Section 205(h) Alternative Systems, and Section 205(i) Innovative/Alternative Reserves

I.C.3. 1) If a State does not transfer its entire Title II allotment to Title VI, can it still transfer all of the mandatory section 205(h) and/or 205(i) reserves?

A: Yes, up to the amount of the proposed 205(m) transfer. As soon as possible, but no later than the submission of the capitalization grant application requesting the transfer of the Title II funds, the State must notify the RA how the reserves will be affected by the proposed transfer. (Note: 205(j) funds may not be transferred.)

I.C.3. 2) If the reserves are to be transferred anyway, why establish them in the first place?

A: Subsections (h) and (i) of section 205 require States to establish I/A and rural reserves based on the State's allotment of Title II funds. While section 205(m) authorizes the transfer of Title II funds to Title VI, no exemption from establishing the 205 (h) and (i) reserves is provided. Consequently, to permit

compliance with section 205(h) and (i) and to allow for the maximum transfer of Title II funds, the procedural requirements of 205(h) and (i) must be satisfied before those amounts may be transferred. The advance of allowance reserve is optional. Therefore, it should not be established if the intention of the State is to transfer the funds to Title VI. However, if the advance of allowance reserve is established, the calculation (up to 10 percent) may be based on the full Title II allotment. The section 205(g) reserve is also optional, and is calculated (up to 4 percent) on the basis of the State's share of the authorization.

I.C.3. 3) Can a portion of a reserve be transferred and the remainder retained for Title II purposes?

A: Yes. At its option, a State may retain all, none or a portion of the I/A and rural reserves for Title II purposes.

I.C.3. 4) If a State opts to transfer its FY 87 and/or FY 88 I/A and rural reserves in full, how do these transfers relate to the authorized transfer limits in section 205(m)?

A: A State's decision regarding establishment of reserves under Title II has no effect on possible transfers under section 205(m). (See question I.A. 5) The total funds transferred cannot exceed 50 percent of FY 87 and 75 percent of FY 88 allotments in the years of each appropriation. However, the State's entire I/A and/or rural reserves can be included within the transferred funds.

I.C.3. 5) May a State revert for Title II purposes some funds transferred to the SRF under section 205(m) (e.g., to cover modification and replacement costs arising from Innovative/Alternative grants)?

A: Yes, but only from the portion of the capitalization grant amount not reflected in the letter-of-credit ceiling (i.e., payments have not been made via an increase to the LOC).

D. Reserves from Title VI Allotments

I.D. 1) How will the section 604(b) reserve be provided?

A: The section 604(b) reserve will be provided as a separate grant award under 205(j)(2), under Guidance for Management of Section 205(j)(1) and Section 604(b) Funds during Fiscal Years 1988-1990 issued by the EPA Office of Water Regulations and Standards (OWRS), August 18, 1987, addressed to the Regional Water Management Division Directors. Grants under this reserve are subject to the 40 percent passthrough requirement for regional water quality management planning under section 205(j)(3).

II. USES OF STATE REVOLVING LOAN FUNDS

A. Eligible Activities of the SRF

II.A. 1) Can a municipality receive SRF assistance to purchase a plant to be used in a regionalization project?

A: Yes, if such purchase is one of the authorized forms of assistance and meets the requirements established by Title VI, section 212 and the SRF.

II.A. 2) Can a turnkey (design/build) project receive SRF assistance?

A: Yes, if the project or activity is eligible under the State program and sections 212, 319, or 320.

II.A. 3) Can a State count SRF section 319 assistance toward meeting its section 319(h) 40 percent match or its 319(i) 50 percent match?

A: A State cannot count, as part of its section 319(h) 40 percent match or its 319(i) 50 percent match, SRF assistance provided to sub-recipients for section 319 NPS activities if the SRF assistance is from funds directly made available by the capitalization grants. Such funds constitute Federal financial assistance and may not be used to match other Federal assistance unless such use is explicitly authorized by statute. Title VI does not explicitly authorize the use of SRF

funds to match section 319(h) or (i) funds. Section 603(h) only authorizes the use of SRF assistance to match EPA Title II construction grants for treatment works projects and, therefore, does not apply to the proposed section 319 match. Similarly, the State cannot count the same State expenditures toward meeting both its SRF and section 319 match requirements. The State can, however, count the amount of SRF assistance provided from non-Federal sources toward meeting its section 319 match, including: interest earnings on fund accounts, loan repayments, State funds in excess of its 20 percent SRF match, and bond proceeds in excess of the grant amount, when spent on section 319 activities.

II.A. 4) Can a section 212 project (or a portion of a project) constructed with SRF assistance be sold to a private concern (privatized), for example, a sale-leaseback transaction?

A: Yes, if provided for under the State program. Since section 212 project assistance can only be made available to publicly-owned facilities, however, the assistance agreement would have to be terminated in accordance with the terms of the agreement and the assistance repaid to the SRF immediately upon sale.

II.A. 5) If a section 212 project (or a portion of a project) constructed with SRF assistance is privatized, how are the proceeds of the sale distributed?

A: The State should establish policies for distribution of proceeds from the sale of facilities assisted by the SRF. In doing so, the State should recognize that it is not the intent of Title VI to provide subsidies to the construction of private treatment works. If an SRF assisted facility is to be sold, the assistance agreement would have to be terminated in accordance with the terms of the agreement and the assistance repaid to the SRF immediately upon sale. The State has the responsibility to determine disposition procedures and policies. EPA encourages States to require facilities to be sold for "fair market" value (i.e., construction cost adjusted for depreciation). Further, EPA encourages States to require that any net proceeds of the sale, including any amounts in excess of the SRF assistance amount, be paid to the SRF.

II.A. 6) Are cost effective "conservation-type" wastewater strategies eligible for assistance from an SRF?

A: At the State's option, conservation strategies including "structural" approaches (e.g., publicly-owned water meters, water saving or recycling devices, and greywater separation systems) and "non-structural" measures (e.g., public education and incentive wastewater service charges) are eligible for SRF assistance. **(Note: "publicly-owned" added in compilation.)**

II.A. 7) Are "replacements" allowable for SRF assistance?

A: Yes, replacements may be minor or major. Major replacements, reconstructions, or substitutions necessary to correct system failures are allowable for both equivalency and non-equivalency projects. Minor replacements are generally eligible under section 212(c)(3) (e.g., expenditures for obtaining and installing equipment, accessories, or appurtenances during the useful life of the treatment works necessary to maintain the capacity and performance for which such works are designed and constructed). However, equivalency projects and projects previously funded with construction grants (to the extent that the facility is within its design life) must comply with section 204(b)(1) which requires that user charge systems be adopted which include adequate provision for operation and maintenance costs, including minor replacements.

II.A. 8) What types of activities can an SRF fund in accordance with section 319?

A: Under section 603(c), SRFs can fund implementation of management program activities detailed in the approved State Nonpoint Source Management Program prepared in response to section 319(b)(2)(A-F). Assistance may be in the form of a loan or other assistance as provided by Title VI. Activities may be either for implementation of nonpoint source control under section 319(h) or ground water protection activities eligible under section 319(i). SRF assistance for section 319 activities may be provided to individuals for demonstration projects. (See Nonpoint Source Guidance [December, 1987] and CWA Funding Sources and Their Uses for the Implementation of State Nonpoint Source Management [August, 1988] published by EPA Office of Water Regulations and Standards.)

II.A. 9) What types of activities can an SRF fund in accordance with section 320?

A: An SRF can fund under section 320 the development of or implementation of Estuary Conservation and Management Plans. Section 320 activities that are nonpoint source control related should be included in

an approved State Nonpoint Source Management Program in order to be eligible for assistance. (More specific guidance is currently under development by the EPA Office of Marine and Estuarine Protection.)

II.A. 10) Can a State provide both SRF and section 319(h) assistance to the same nonpoint source activity?

A: Yes, providing that eligibility requirements for each assistance program are satisfied.

II.A. 11) If a State imposes its own match requirement on recipients of section 319(h) or (i) assistance, can the State accept SRF nonpoint source assistance to the recipients as meeting that match requirement?

A: Yes.

II.A. 12) Are costs of collection systems eligible?

A: Yes. However, funding of collection systems is subject to the provisions of sections 201(g)(1)(A) and 211, which condition the use of funds directly made available by the capitalization grant. In addition to the 20 percent discretionary amount (which applies to funds directly made available by the capitalization grant), States, at their option, may use SRF funds other than those directly made available by the capitalization grant to provide assistance for the construction of collection systems without regard to sections 211 or 201(g)(1)(A).

These limits on the use of funds directly made available by the capitalization grant do not apply to funds appropriated for FY 1990. Pursuant to the FY 1990 appropriation act, PL 101-144, FY 1990 Federal funds are available for any POTW construction, as defined in section 212, without regard to the limits in section 201(g)(1).

II.A. 13) Are start-up services eligible for SRF assistance?

A: Yes, at the option of the State.

II.A. 14) Are planning and design costs eligible for SRF assistance?

A: Yes, at the option of the State.

II.A. 15) If SRF assistance is provided for planning and design costs, is the SRF obligated to provide assistance for facility construction?

A: No. At its option, an SRF may provide assistance only for facility planning and design.

II.A. 16) Can States use an "allowance" table to determine allowable costs for non-building activities (e.g., planning, design, and construction engineering activities)?

A: Yes.

II.A. 17) Are costs for land, rights-of-way, easements, and compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 for section 212 projects eligible for SRF assistance?

A: For all section 212 projects, eligibility for purchase of lands, rights-of-ways, and easements is limited to land that will be an integral part of the treatment process or will be used for sludge disposal. Because the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act) is a cross-cutting Federal requirement, SRF assistance recipients from funds directly made available by the capitalization grant must comply with its terms. The Uniform Act makes allowable compliance costs incurred by Federal financial assistance recipients. Therefore, such costs are allowable under the SRF program for recipients of funds directly made available by capitalization grants.

II.A. 18) Can a community pledge its POTW or the revenue stream from its POTW financed with SRF assistance as collateral for a private loan for subsequent expansion or improvements?

A: Yes, however subsequent debt obligations must not reduce the ability of the community to meet its repayment obligations to the SRF and the community must maintain the debt service coverage used to underwrite the SRF loan. Underwriting practices for subsequent debt obligations may provide bondholders of both SRF and non-SRF obligations with equal, parity claims to revenues of the wastewater system. The administrator of the SRF should examine the credit tests which a local community would have to meet before issuing further obligations on a parity with existing SRF loans.

II.A. 19) May a community lease, to a private operator, a POTW constructed with SRF assistance?

A: Yes, subject to the terms of its SRF assistance agreement with the State. The State and community should carefully review possible tax implications prior to approving lease arrangements. (Leases are typically part of contract operations arrangements.)

II.A. 20) Can SRF assistance be provided to buy a wastewater treatment facility which was privately financed and/or operated?

A: Yes, so long as the facility meets the definition of a section 212 treatment works and, if the SRF funds used for the purchase are equivalency funds, the purchase in and of itself provides new pollution control benefits [see also II.A.1.]. The latter limitation does not apply to non-equivalency funds. Assistance provided must be in the form of refinancing. The cash draw rules for refinancing apply whether or not the privately financed facility has outstanding indebtedness.

II.A. 21) How should "municipality" be defined in the SRF program?

A: The definition of municipality for the purposes of the SRF program is as stated in section 502 of the Clean Water Act: "a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewerage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of this Act." States may at their option also provide SRF assistance to special districts with appropriate authorities under State law.

The 40 CFR section 35.2005(27) restriction that a special district must have as one of its principal responsibilities the treatment, transport or disposal of domestic wastewater does not apply.

II.A. 22) Can SRF assistance be provided for municipal facilities constructed to transport or treat industrial wastes?

A: Yes, as long as the facility is publicly-owned, because the definition of treatment works in section

212 of the CWA includes facilities to deal with serve municipal or industrial wastes, the State has the option of funding municipal facilities to handle industrial wastes. However, such projects must be part of a larger wastewater system, the primary purpose of which is to treat domestic waste. In addition, assuming the use of tax-exempt bonds, States are encouraged to seek assistance from appropriate authorities to determine the tax impacts regarding the "private purpose" provisions of the Tax Act.

II.A. 23) May SRF loans be assumed by private purchasers upon sale of a facility?

A: No. Upon sale of a wastewater treatment works to a private purchaser, all SRF direct loans are due in full. SRF guarantees are not transferrable to privatized facilities.

II.A. 24) Is capitalized interest an eligible cost for SRF assistance?

A: Yes, at the option of the State. Construction loans generally factor in interim interest carrying costs. The State may wish to collect advanced interest as "discount points" on the principal to be received at the closing for the loan agreement. Because the project does not generate revenues until initiation of operations, payment of interest from the loan proceeds allows timely repayments. To assure the financial health of the SRF, a State may wish to charge interest on funds advanced during construction until project completion. An SRF may wish to consider "interest-only" payments from the period of loan closing until project completion.

II.A. 25) What is the relationship between the use of 205(g) funds for SRF development and the 4 percent limit for administrative expenses from the capitalization grant?

A: There is no relationship. Funds spent under section 205(g) do not count against the 4 percent limit of the capitalization grant for administration.

II.A. 26) May an SRF provide assistance to municipalities in another State?

A: No, unless consistent with section 603(c) which authorizes SRFs to provide assistance to interstate agencies for the construction of publicly-owned treatment works. Proposals for assistance to municipalities should be reviewed on a case-by-case basis to determine their compliance with the language and intent of the statute. Under section 603(g), an SRF may fund the construction of publicly-owned treatment works only if the treatment works appear on the State's PPL. Section 216 assigns States the responsibility for determining the priority of projects "within each State". Under the SRF program, funds allotted to a State, but not obligated by the end of their period of availability, must be reallotted by EPA to other States to ensure that funds are distributed on an equitable, nationwide basis.

II.A. 27) May an SRF finance the construction of a private wastewater treatment system, such as replacement/ upgrade of a failing system that is in need of rehabilitation?

A: An SRF may only finance the construction of wastewater treatment works that are publicly-owned. However, if a unit of government assumes ownership of a system which was previously privately owned, it may be funded under the authority of section 603(c). Certain privately owned systems may also be funded if they can be classified as NPS projects eligible for construction under sections 319 or 320. At their option, States may deem the public ownership requirement to be met for small/onsite systems where adequate inspections and operations are assured through the establishment of a management district or use of service easements or agreements.

II.A. 28) Is implementation of activities recommended in plans developed under the Great Lakes and Chesapeake Bay programs eligible for assistance under section 320?

A: Under section 320, Title VI loans may support the development and implementation of a conservation and management plan under The National Estuary Program). The Great Lakes and Chesapeake Bay programs are not currently designated under the NEP. Title VI assistance cannot fund Chesapeake Bay or Great Lakes clean-up initiatives unless they are also eligible under sections 212 or 319. Great Lakes and Chesapeake

Bay management activities are funded independently under sections 118(h) and 117(d) of the Clean Water Act respectively and, therefore, are not eligible under section 320(a). Within these two drainage basins, section 319 NPS management program implementation and section 212 projects could receive SRF assistance.

II.A. 29) Is implementation of activities recommended in plans developed under the near coastal areas program eligible for assistance under section 320?

A: Not unless part of an estuary CCMP.

II.A. 30) Which estuaries are eligible for SRF assistance under section 320?

A: Estuaries must be nominated under section 320(a) in order to be eligible for assistance. Governors may nominate other estuaries for designation consideration by the EPA Administrator. Currently management conferences have been convened in twelve estuaries: San Francisco Bay, Santa Monica Bay, Long Island Sound, Delaware Bay, Delaware Inland Bays, Sarasota Bay (FL), Buzzards Bay (MA), New York-New Jersey Harbor, Albermarle/Pamlico Sound (NC), Narragansett Bay (RI), Galveston Bay (TX), and Puget Sound (WA). In April 1990, the following estuaries were added to the National Estuary Program: Barataria-Terrebonne Estuarine Complex (LA), Casco Bay (ME), Indian River Lagoon (FL), Massachusetts Bay (MA), and Tampa Bay (FL). **(Note: Additional estuary designations included in complilation.)**

II.A. 31) How can designated estuaries participate in SRFs?

A: Under section 320, the SRF can loan funds for undertaking a management conference to develop a comprehensive coordinated management plan (CCMP) for the estuary. The management conference members should work with appropriate State SRF administrators and/or appropriate State water quality officials to ensure that priority estuary activities are included on the State's Priority Project List and/or Intended Use Plan.

II.A. 32) What types of estuary restoration activities are eligible for SRF assistance?

A: Any project or activity included in the comprehensive coordinated management plan (CCMP) developed by the Management Conference and approved by the EPA Administrator and concurred in by the Governor(s) is eligible for SRF assistance under section 320. These projects could include wetlands restoration, nonpoint source control programs, sediment detoxification, living resource restoration, water quality monitoring, and construction of capital facilities such as treatment plants or stormwater retention basins. In practice, however, some activities (e.g., water quality monitoring) may be impractical to implement under the SRF.

Other types of estuary clean-up projects -- those that are capital intensive with a user base to support repayments -- are well suited to SRF financing. For example, wastewater treatment facilities which discharge to estuarine waters or to the headwaters of estuaries are eligible for SRF assistance (subject to the first use requirement). To use SRF funds "directly made available" by the Federal capitalization grant, stormwater control facilities must meet the conditions of sections 201(n)(1), 201(g)(1), and 211. [Note that section 201(n)(1) provides States flexibility in funding combined sewer overflow facilities if a priority water quality problem in the State.] Because of the limitations of section 211, funding of separate stormwater facilities (i.e., not part of a CSO sewer separation project) prior to FY 1990 cannot be counted towards satisfying the equivalency requirement. However, the State at its option may bank such funding toward satisfying the equivalency requirement in future years.

II.A. 33) May SRF assistance finance the correction of combined sewer overflow (CSO) problems that affect estuary water quality?

A: Yes. However, as one of the equivalency requirements, section 201(g)(1) limits to 20 percent use of the capitalization grant amount to fund certain section 212 projects including CSOs. (This limit does not apply to funds appropriated in FY 1990. See II.A. 13.) Under section 201(n)(1), however, up to the full amount of the grant can be used for CSOs to satisfy the equivalency requirement if the State determines (as reflected in a request from the Governor) that CSOs are a major priority in its water quality management program. Any other funds in the SRF can be used for CSOs.

II.A. 34) May funds available under section 604(b) be used in accordance with 205(j)(5)?

A: No. Section 604(b) funds are for <u>water quality management planning</u> purposes, in accordance with sections 303(e) or 205(j)(1), including activities such as monitoring, standards setting, and planning, but not program implementation.

II.A. 35) Are environmental review costs allowable?

A: Yes. Costs to municipalities for preparing environmental assessment reports (including EISs prepared by "third party" consultants hired by loan recipients and approved by the State SRF agency) may be included as part of the assistance amount. Costs incurred by the State in reviewing the environmental assessments are considered SRF administrative costs.

II.A. 36) If a State provides overmatch and deposits these funds into the SRF, can these funds be used to provide assistance to projects which might not meet all Title VI requirements?

A: No. Once funds from any source are deposited into the SRF account, the funds are subject to applicable provisions of Title VI regarding operations of the SRF.

II.A. 37) If a treatment works project that has received a Title II construction grant experiences a cost overrun, and no additional grant funds are provided to cover that cost overrun, may the SRF provide a loan for the full amount of those additional costs?

A: Yes. Section 603(h) prohibits loans only for the non-Federal share of a treatment works project funded under the construction grant program. In the case above, the project has already received a construction grant for the Federal share, and the State or municipality has provided the non-Federal share. Federal construction grants assistance is not being furnished for the cost overrun, so a non-Federal share requirement does not exist.

B. Types of Financial Assistance

1. Loans (Section 603(d)(1))

II.B.1. 1) Can States provide "incremental" assistance to finance a multi-year construction activity?

A: Yes.

II.B.1. 2) May separate loans be made for planning and/or design costs?

A: Yes, at the option of the State. Repayment of such loans would begin consistent with project completion as described in the State's capitalization grant application. At the option of the State, separate loans for planning and/or design may be "rolled over" into a subsequent loan for construction.

II.B.1. 3) For "second round" (and later) loans, may SRFs enter into loan agreements with repayment periods longer than 20 years?

A: No. The limitation on twenty year repayment periods applies to all loans made by the SRF.

II.B.1. 4) What previously incurred costs may be included in a loan under section 603(d)(1)?

A: Loan assistance may be provided for prebuilding project costs (planning, design, etc.), regardless of when they were incurred, and building costs incurred after March 7, 1985. The prebuilding costs in the loan agreement must be limited to the prebuilding costs associated with the scope of the building included in the loan.

II.B.1. 5) May States draw cash for prebuilding and building costs incurred prior to an SRF loan which are included in a loan for prospective work?

A: Yes, States may provide SRF assistance for previously incurred building costs which were incurred after March 7, 1985. Where an otherwise eligible project has been constructed after March 7, 1985, with funds obtained from intramunicipal transfers rather than third party debt for construction, such intramunicipal transfers will be treated as debt obligations and therefore, as refinancing under section 603(d)(2). The proceeds of such a refinancing transaction should be deposited in the construction account and used to repay the debt obligation. Where SRF refinancing assistance is provided for a project originally funded with other than third party debt, the Regional Office will examine the areas discussed below in the Annual Review of the State's SRF.

As with any use of the fund, the requirements of Title VI must be met, and we strongly encourage States to establish binding or other funding commitments for these projects prior to initiation of construction to the extent possible. In addition, the link of the project to the goals and objectives of the State's SRF program as stated in the IUP must be documented, and the project must be included on the Project Priority List in the year the assistance is provided. The

Region must confirm that the above documentation has been included in the State's IUP which has been subjected to public review.

The State should consider any tax implications of funding such a project and be able to document that eligible costs were actually incurred on the project in the amount of the SRF assistance. Loans must be fully amortized not later than twenty years after project completion and annual principal and interest payments must commence not later than one year after project completion or upon loan closing, whichever is later.

a. Interest Rate

II.B.1.a. 1) The Act requires that loans be made at or below "market rate". Who is responsible for determining the market rate?

A: The State is responsible for determining the market rate, as well as the actual SRF loan/refinancing rate(s).

II.B.1.a. 2) Can an SRF enter into a loan agreement with variable interest rates?

A: Yes. The SRF may charge different rates of interest during the term of the loan. It may be desirable to allow interest deferral. For example, the SRF could charge a 0% rate of interest for the first five years of a loan, 5% per year for the second five years, and a market interest rate (prevailing at the time of the loan agreement) for the duration of the loan.

II.B.1.a. 3) Is there a minimum "return rate" required to maintain the "perpetuity" of the fund?

A: No.

b. Repayment to SRF

II.B.1.b. 1) Who determines when a project is complete (initiation of operation) and that repayments begin?

A: The State will have responsibility for all project-level management, including verification of completion.

II.B.1.b. 2) Can loan repayment schedules be established which include "balloon" payments (e.g., final payments of principal and interest falling due in later years of the debt obligation which are substantially larger than preceding payments)?

A: Yes, but States considering the use of balloon payments in their loan agreements should be aware of possible implications such as: (1) the ability of the community to repay a balloon payment (potential default), (2) a possible reduction in State's ability to leverage, and (3) the reduced payment stream in early years will reduce the SRF's ability to provide further assistance. If proposed as part of a SRF program, this form of repayment should be addressed in the IUP including a discussion of possible impacts on the long term health of the fund. Before approving a capitalization grant, EPA will review the State's evaluation of the potential effects of use of balloon payments. In any case, repayments cannot exceed twenty years (i.e., cannot modify the repayment schedule during the life of the loan to exceed twenty years).

II.B.1.b. 3) What is the responsibility of the SRF if a loan recipient fails to comply (defaults) with the repayment terms of the loan agreement?

A: The SRF is responsible for protecting the financial integrity of the Fund. Prior to executing loan agreements, the SRF should determine the financial capability of the recipient to repay the loan. To safeguard against the possibility of default, the State should include procedures in loan agreements which address the dedicated repayment source requirement. In addition, the State should have the power to ensure repayment. For example, if a recipient is unable to collect sufficient revenues under its wastewater service charge (i.e., dedicated repayment source), the SRF should have the ability to require the recipient to revise its wastewater service charge to generate sufficient funds to meet the repayment schedule in the loan agreement or take whatever other steps are necessary to raise the necessary funds. User fees should be sufficient to cover not only general operating costs (including routine repairs and replacements), but also major replacements and debt service. In some cases, States may have the authority to take title to the facility and operate it directly.

II.B.1.b. 4) May a State charge delinquent fees for late payments or defaults?

A: Yes.

II.B.1.b. 5) May a State provide a discount to loan recipients for accelerated repayment?

A: Yes, at the option of the State. Such discounts apply, however, only to interest, not to outstanding principal amounts.

II.B.1.b. 6) What is meant by "maintaining the fund in perpetuity"?

A: Under section 603(c) of the Clean Water Act, SRFs "shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for providing such financial assistance." SRF loan conditions are designed to maintain the financial integrity of the Fund without hampering the flexibility of States to use SRFs to address the diverse needs of municipalities. As part of its Fund management strategy, each State should strive toward maintaining the availability of money for meeting future wastewater facility and other water quality management needs as well as protecting the fiscal health of the Fund.

c. Dedicated Repayment Source

II.B.1.c. 1) Does the "dedicated source of revenue" requirement apply to forms of SRF assistance other than loans?

A: No. This provision applies only to SRF assistance in the form of loans.

II.B.1.c. 2) Who evaluates the sufficiency of the dedicated source of repayment?

A: The State, as part of the process of reviewing/ negotiating a loan agreement with a recipient. As part of the Annual Review process, EPA will review State procedures for assuring the adequacy of dedicated repayment sources.

II.B.1.c. 3) Can facilities with existing debt obligations participate in the SRF program?

A: Yes. Existing debt obligations need not pose a problem to qualify for SRF assistance. Each SRF should set its own criteria for financial capability to repay loans, including consideration of existing debt obligations. An acceptable loan agreement could provide that the SRF take a "subordinated" position to other debts of a loan recipient (i.e., the community's user charge revenues may already be pledged as repayment for an existing bond issue for previous construction; revenues should be sufficient to retire both bond issues; in case of default, however, repayment of the pre-existing debt instrument takes precedence). However, to minimize any cash flow problems in collecting repayments from a loan recipient that this may cause, prior to providing a loan, a State should ensure that: recipients demonstrate both their ability to make timely repayments to satisfy loan requirements and to provide "security" or collateral to ensure that the Fund receives payments when due.

II.B.1.c. 4) What type of revenue would satisfy the requirement for a dedicated source of repayment for an individual receiving an SRF loan under the provisions of sections 319 and 320?

A: As provided in the OWRS Nonpoint Source Guidance (December, 1987), in the case of loans made to nonpublic entities or to individuals (e.g., farmers) for section 319 activities, the dedicated source of revenue for repayment of loans, as required by section 603(d)(1)(C), may include an existing unencumbered source of revenue (e.g., earnings of the farm) or assets adequate to meet the loan repayment requirements in a timely fashion. Because nonpublic entities generally will not have a wastewater service charge or other comparable revenue stream, collateral (e.g., mortgages, liens) may be required as for commercial loans under State law.

For loans to municipalities or other public entities for section 319 or 320 activities, a loan agreement could provide for a "subordinated" position. The Office of Marine and Estuarine Protection is preparing guidance dealing with the funding of section 320

activities. For section 319 activities, see also CWA Funding Sources and Their Uses for the Implementation of State Nonpoint Source Management, issued by the Office of Water Regulations and Standards.

II.B.1.c. 5) What level of review of the recipient's ability to repay SRF loans is required?

A: As part of the capitalization grant application process, the State must agree to require a dedicated source of repayment for all SRF loans. The specific procedures a State uses for financial capability determinations and loan repayment provisions are at the discretion of the State, but should be established to protect the financial integrity of the Fund. As part of the Annual Review process, the Regions can review the activities of the Fund to ensure that there has not been a failure to repay loans.

2. Refinancing Existing Debt Obligations (Section 603(d)(2))

II.B.2. 1) For the purpose of refinancing, what constitutes a "debt obligation", as required by section 603(d)(2)?

A: Debt is a promise to repay borrowed funds (e.g., a bill, note, bond, banker's acceptance, certificate of deposit, commercial paper) which is legally enforceable through the terms of a contract or other legal instrument. However, for the purposes of section 603(d)(2), debt obligations may also include transactions or costs incurred between various municipal authorities. Provision for repayment by agreement is through existing municipal cash accounts.

II.B.2. 2) If a State has credited repayments of loans made under a pre-existing State loan program as part of its State match, can projects which were previously financed be refinanced under the SRF?

A: The State cannot count the repayments of prior loans against its State match and also refinance the projects under the SRF. If the State has already counted repayments from certain projects toward its State match which it now wants to refinance, the State must provide replacement funds for the amounts

previously credited as match.

II.B.2. 3) Are pre-building costs eligible for refinancing assistance?

A: Yes, if pre-building costs were identified and included in the amount of the debt obligation which is being refinanced.

3. Guarantee or Purchase Insurance for Local Debt Obligations (Section 603(d)(3))

II.B.3. 1) If a State elects to provide assistance in the form of a guarantee to a community for a section 212 project, must that project satisfy the Title II equivalency requirements?

A: Yes, if that project is to be counted towards meeting the equivalency requirement. The amount of the guarantee reserve is the amount of assistance that may be credited towards meeting the equivalency requirement.

II.B.3. 2) If a State elects to provide assistance in the form of insuring a local bond issue for a 212 project, must that project satisfy the Title II equivalency requirements?

A: Yes, if that project is to be used towards meeting the equivalency requirement. The cost to the SRF of the insurance premiums is the amount of assistance that may be credited towards meeting the equivalency requirement.

II.B.3. 3) Do local bonds guaranteed by the SRF using funds in the Federal Letter of Credit (LOC) lose their tax-exempt status?

A: No. The U.S. Treasury Department issued a notice (#88-54) in April, 1988 which affirmed that the LOC is not a Federal guarantee for repayment of State and local bonds guaranteed by the SRF using funds in the Federal LOC. As a result, the tax-exempt status of these bonds is not affected by the use of the LOC as a means of payment to the SRF.

II.B.3. 4) Do local bonds lose their tax-exempt status solely because they are guaranteed by a reserve account in the

SRF (outside the Federal LOC process)?

A: No.

II.B.3. 5) Is the SRF responsible for loans it has guaranteed? (I.e., if a community defaulted on a loan, would the State have to repay the loan or portion thereof?)

A: Yes, but only up to the amount under the terms of the guarantee agreement. The State is responsible for ensuring the financial health of the fund. To safeguard against the possibility of default, the State should have procedures which require a community to demonstrate its ability to repay the local debt obligation, before the SRF provides the guarantee. In addition, the State should have the power to recover funds adequate to remedy the default (e.g., by attaching State financial assistance payments to the community or requiring the recipient to revise its wastewater service charge to generate funds sufficient to meet the repayment schedule).

II.B.3. 6) May an SRF provide assistance to a community which results in deposit of the funds into an SRF security account?

A: Yes, if the SRF capitalizes a debt service reserve in the SRF and uses it to guarantee a local debt. However, the debt has to be for purposes consistent with sections 212, 319, or 320.

4. Guarantee SRF Debt Obligations

II.B.4. 1) The Initial Guidance permits the SRF to be used as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the "net proceeds" of the sale of such bonds are deposited in the SRF. What is the definition of "net proceeds"?

A: For purposes here, "net proceeds" is defined as the funds raised from the sale of the bonds minus issuance costs (e.g., the underwriting discount, underwriter's legal counsel fees, bond counsel fee, financial advisor fee, rating agency fees, printing of disclosure documents/bond certificates, trustee banks' fees, various forms of credit enhancement and other costs

that may be incurred by a State agency incidental to the bond issuance).

II.B.4. 2) How can loan repayments be credited to the SRF if they are pledged to repayment of SRF bond issues?

A: The repayments are to be first deposited into the SRF and then paid to the pledged issue.

II.B.4. 3) Can the State use funds in the SRF as a security for the issuance of State bonds used to provide the State match?

A: Yes. If the net proceeds of the bond issue were deposited into the SRF and the amount of the security subject to being paid out is limited to an amount equal to the interest payments to the Fund from SRF loan recipients.

II.B.4. 4) Can the State use funds in the Federal LOC to guarantee the repayment of a State bond issue used to provide the State match?

A: No, only loan interest payments may be used to capitalize a guarantee reserve for the State match.

II.B.4. 5) Do State bonds guaranteed by funds in a Federal Letter-of-Credit (LOC) lose their tax-exempt status?

A: No. The U.S. Treasury Department issued a notice (#88-54) in April, 1988 which affirmed that the LOC is not a Federal guarantee for repayment of State or local bonds guaranteed by the SRF using funds in the Federal LOC. As a result, the tax-exempt status of these bonds is not affected by the use of the LOC as a means of payment to the SRF.

II.B.4. 6) Do State bonds guaranteed by a reserve account in the SRF (outside the Federal LOC process) lose their tax-exempt status?

A: No.

II.B.4. 7) May States use SRF funds to make rebate payments of arbitrage earnings and penalties, if applicable, to the U.S. Treasury?

A: Yes, the proceeds of a bond issue secured by SRF funds may be used to make rebate payments, but only if the net proceeds of the bond issue were deposited in the SRF in accordance with section 603(d)(4). Moreover, in the case of State bonds issued for the purpose of providing the State match, the rebate payment must come from funds attributable to the interest portion of repayments on SRF loans or interest earnings of the SRF. SRFs are urged to proceed cautiously because the Internal Revenue Service has not

yet released regulations implementing the Tax Reform Act of 1986. Consequently, procedures for accounting and reporting rebate earnings are unclear.

II.B.4. 8) How does "first use" apply in the case of an SRF leveraged with some or all of the capitalization grant?

A: "First use" applies to an amount equal to the grant, repayments from the first round of loans awarded from the grant, and the State match, even if some or all of the grant and the match are used to create a reserve account to secure a debt (i.e., leverage the grant).

Withdrawals from the reserve account to satisfy its reserve function can be made even if first use has not been satisfied, but these withdrawals cannot be counted toward meeting the "first use" provision. In place of the withdrawn funds, other SRF funds, in an amount up to the "first use" amount, become subject to the first use requirement.

5. Loan Guarantees for Sub-state Revolving Funds (Section 603(d)(5))

II.B.5. 1) What does "provide loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies" mean?

A: This section refers to municipalities, as defined by section 502 of the CWA (including special purpose districts), which have authority over areas that require multiple projects or activities eligible for SRF assistance under sections 212, 319 and 320. The provision allows these entities to receive loan guarantees for eligible projects or activities that would serve discrete sub-entities (e.g., a suburb or subdivision within the district).

II.B.5. 2) What type of review or oversight should States maintain over sub-state revolving funds?

A: States should review the portfolios and operating policies of such funds, as well as the risk associated with providing an SRF guarantee of their debt obligations. Essentially, the review/oversight should

be comparable to that of any other SRF assisted activity.

6. Earn Interest on Fund Accounts (Section 603(d)(6))

II.B.6. 1) Are there any limits to the type of investments that can be made with fund accounts?

A: Under section 603(d), SRFs may undertake activities for the purpose of earning interest on fund accounts. This authority does not include investment methods that earn dividends or yields other than interest. If the SRF proposes to derive a substantial portion of its funds from investments, the IUP should describe the SRF's general financial management strategy. In these instances, before approving a capitalization grant, EPA will review the SRF's evaluation of the long term fiscal health of the fund as effected by the proposed investment strategy. The SRF Annual Report should describe the results of the investment strategy for the year. In addition, the SRF Annual Audit must report interest earnings as a result of investment activities. Most States have State laws that restrict the eligible investments for these fund accounts. Furthermore, if a State engages in a leveraged program, there may be restrictions on eligible investments in the trust indenture securing the bonds. In certain cases, the Federal tax code may limit the investments a leveraged program can make with fund accounts.

II.B.6. 2) Can an SRF make loans the principal purpose of which is to establish a local interest earning fund from which the local government will use the interest earned to reduce the cost of funding its projects?

A: No. This is not an allowable use of the fund as outlined in section 603(d). Funds internal to the SRF can be set-aside for investing and earn interest to pay the debt service of the fund (and thereby offset below market interest rates). However, if allowed by State law, not inconsistent with cash draw rules, and approved by the Region, a community may invest incidental idle construction funds obtained from an SRF loan and use the interest to reduce the cost of its project.

II.B.6. 3) Can an SRF pay interest earned by the SRF to the State Treasury (or other State account) if required by State law?

A: No. Once funds are deposited into an SRF, any interest earned can only be expended by the SRF for one of the seven types of assistance activities listed in section 603(d). However, interest earned on State funds prior to deposit into an SRF would be paid according to State law.

7. SRF Administrative Expenses (Section 603(d)(7))

II.B.7. 1) Is there any prohibition against a State using its own non-SRF funds to augment the administrative funds available from the SRF, which are limited to 4% of all grants?

A: No. In fact, if additional funds are necessary to administer the SRF program, beyond the 4% of the grants authorized by the Clean Water Act, they must be provided from sources outside of the SRF and in addition to the State match.

II.B.7. 2) How can a State demonstrate that it has not exceeded the 4% limit for expenditure of SRF funds for administrative expenses?

A: As part of its Annual Report, the State should specifically identify administrative costs. This will facilitate the Annual Review and audit, including review of compliance with the 4% limitation.

II.B.7. 3) Can the State use part of its 4% SRF administrative funds to enter into an intergovernmental agreement with the U.S. Army Corps of Engineers for construction management similar to the CG program?

A: Yes, assuming the Corps is willing to enter into such an agreement.

II.B.7. 4) What is included in the definition of using 205(g) funds to "develop" an SRF?

A: Planning for, establishing, and refining (but not administering) the SRF during the period of availability of 205(g) funds.

II.B.7. 5) Can awarded, unspent, pre-FY 87 205(g) set-asides be

used to develop the SRF (e.g., prepare regulations)?

A: Yes, so long as the 205(g) grant award is amended to reflect the SRF effort.

II.B.7. 6) Can a State be reimbursed from a Federally capitalized SRF, for administrative costs of the SRF incurred prior to the award of a capitalization grant?

A: No, States cannot be reimbursed for costs incurred prior to grant award. (See 40 CFR 30.308; effective 10/1/88, Part 31)

II.B.7. 7) Can costs incurred in development of the SRF instrumentality or specific portions of capitalization grant applications be counted against State match?

A: No. This would have the effect of using Title VI funds to reimburse or directly pay costs incurred by the State in developing SRF legislation or the instrumentality or in preparing capitalization grant applications.

II.B.7. 8) May a State charge a fee (not interest) to process, manage or review an application for SRF assistance?

A: Yes, at the option of the State.

II.B.7. 9) May the State collect an application fee? If so, must collected fees be deposited into the SRF?

A: Yes, States may charge application fees. If collected, such fees may be kept in a fund outside of the SRF. Such a fund may be used to supplement the administrative expenses available from the SRF itself. If fees collected are deposited into an SRF account, they are subject to the stipulated uses of the fund, including the four percent ceiling for administrative expenses.

II.B.7. 10) What SRF program development activities are considered to be eligible under section 205(g)?

A: Specific SRF development activities under section 205(g) are subject to negotiation with the Region. Generally, such costs activities may include development or revision of SRF base materials (e.g., legislation, the instrumentality, regulations) and establishment or revision of financial, legal, and administrative procedures necessary to implement the SRF. These activities may also include preparation of the IUP or SRF bond issues. In any case, eligible

activities must be described and accounted for in the same manner as other 205(g) activities.

II.B.7. 11) When disbursing funds for eligible administrative costs, can a State use "funds as a result of" prior to certifying compliance with the first use requirement?

A: Yes.

C. Prevention of Double Benefits

II.C. 1) For projects which may have received construction grant assistance, can a State provide SRF assistance for the portion of the project which is ineligible under Title II (e.g., reserve capacity, replacements)?

A: Yes, if the work is eligible under the State program and meets the definition of section 212.

II.C. 2) If a State provided a Title II grant for facility planning, can the SRF provide a loan for design?

A: Yes. This is a separate activity and, therefore, would not be considered a double benefit.

II.C. 3) Does the section 603(h) prohibition against making SRF loans available to construction grants projects apply to activities funded under sections 319 and 320?

A: No. There is no Federally stipulated local match requirement at the substate level. At its option, a State may provide SRF assistance to activities under section 319 which also received Title II grants in accordance with section 201(g)(1)(B) unless the activities meet the definition of section 212. Section 320 activities are not eligible under section 201(g)(1)(B) unless they are included in an approved State NPS Management Program.

D. Assistance for the Non-Federal Share

III. MAJOR LEGISLATIVE PROVISIONS AFFECTING CAPITALIZATION GRANT AGREEMENTS

A. Capitalization Grant Agreement

III.A. 1) Must a State have delegation under the CG program in order to receive a capitalization grant?

A: No. However, experience as a delegated State will make it easier for a State to demonstrate in its application that it can administer an SRF program in accordance with Title VI.

B. Legislative Requirements for the Grant Agreement

1. Agreement to Accept Payments

2. Provide a State Match

III.B.2. 1) Must the State have appropriated funds for the match at the time it enters into the capitalization grant agreement?

A: No, however, at the time of award, the State must show that it has the financial and legal capability to satisfy the match on or before the date of each capitalization grant payment.

III.B.2. 2) Can a State use funds received under other Federal programs to meet the match requirement?

A: Only if specifically allowed by the laws and procedures of those programs.

III.B.2. 3) When including administrative costs as part of a capitalization grant application, does the State match requirements apply to the total amount of the capitalization grant?

A: Yes. The State match must be calculated on the basis of the entire amount of the capitalization grant.

III.B.2. 4) Is the State match acceptable to satisfy the level of effort requirement for the section 106 Program?

A: No. These two different requirements cannot be satisfied with the same funds.

III.B.2. 5) What requirements must be met to qualify loan and repayment amounts from "pre-existing" State loan programs as a source of State match?

A: For loans made from State funds after March 7, 1985 but before the award of the capitalization grant, the amount of outstanding principal can be credited in full toward the State match if the projects met Clean Water Act requirements in effect at the time of the loans. (The repayment stream from these loans cannot also be counted because that would be double counting.)

For loans prior to March 7, 1985, only repayment amounts can be counted toward State match; credit may be given as the repayments are received and deposited into the SRF fund. Similarly, as the State receives repayments of interest and principal for loans made after March 7, 1985, it may want to transfer these funds to the SRF as part of its match requirement. As a result, a pre-existing loan portfolio may generate both cash and credit (of future principal repayments) toward meeting the State match requirement. As the State receives repayments of principal which it claimed credit for, those funds must be transferred to the SRF if payments are not made directly to the SRF.

III.B.2. 6) Can State loan funds which were used to supplement Title II grants (e.g., to pay for the 45 percent local share of a grant project) be claimed as State match for the State Revolving Fund?

A: No. In order to qualify for match, the funds must be used for a purpose that is allowable under Title VI. Use of loan funds to provide local match for a construction grant is not allowable under section 603(h).

III.B.2. 7) May another State agency loan the SRF funds to provide for the SRF State match?

A: No, unless another State agency is authorized to

undertake financial transactions with or on behalf of another State agency as a normal part of its operations (e.g., a State operated bank). This may include providing funds to the SRF through debt offerings if the debt is in the form of a revenue or general obligation bond or a bond anticipation note. These forms of debt can be paid back from interest earned by the SRF. In addition, another State agency may act as trustee on behalf of the grantee for bonds issued to generate the State match.

III.B.2. 8) May a State use application fees to assist in the retirement of bonds issued to generate State match?

A: Yes, so long as the application fees are not first deposited into the SRF account.

III.B.2. 9) Can an SRF use interest repayments from loans and income derived from investments in marketable securities to retire bonds issued for generating State match prior to the satisfaction of the first use requirement?

A: Interest earnings from sources <u>other than</u> loan repayments may be used to retire bonds issued for State match because the first use requirement only applies to funds resulting from the grant (i.e., the grant, repayments from loans made with the grant and the State match.) In addition, interest from repayments may be used to retire bonds, the proceeds of which were used to provide assistance to first use projects or where first use was met.

3. Binding Commitments Within One Year

III.B.3. 1) Is there a minimum repayment term for a loan to count towards satisfying the binding commitments requirement?

A: No.

III.B.3. 2) What actions should a State take if it feels it may not be able to meet the Act's requirement for 120% binding commitments within 1 year after receiving a grant payment (increase in the LOC ceiling)?

A: If a State is concerned about its ability to comply

with the binding commitment requirement, it should notify the RA before it fails to fulfill its responsibility, and propose a revised payment schedule. (The payment schedule is based on the estimated schedule for entering into binding commitments).

III.B.3. 3) Can SRF assistance, used for administrative costs, be counted towards the 120% binding commitment requirement?

A: Yes. Administrative costs can be counted as meeting the binding commitment requirement. For reporting purposes, these costs may be considered "committed" according to the cost estimates in the capitalization grant agreement.

III.B.3. 4) Can a State include reasonable "contingency funds" for projects when establishing a projected and/or actual amount of a binding commitment?

A: Yes. If provided for under the State program, a contingency cost may be included in the estimated project cost covered by the binding commitment.

III.B.3. 5) Can a binding commitment for a loan or other SRF assistance be made from more than one capitalization grant?

A: Yes.

4. Expeditious and Timely Expenditure

III.B.4. 1) Can a State ever withdraw State funds deposited into the SRF?

A: No. Once State funds are deposited into the SRF, they can only be withdrawn to provide authorized types of assistance established by section 603(d). If a State desires to modify its plans for an "overmatch", it may request an amendment to reduce the amount of the overmatch so long as the amount of funds to be reduced has not yet been deposited into the fund.

III.B.4. 2) What does "expended in an expeditious and timely manner" mean?

A: Although there is no specific definition in the Act, the States should move responsibly to commit SRF monies to assistance recipients as quickly and efficiently as possible to facilitate the financing of eligible activities and, where applicable, to initiate

construction with a minimum of delay. In the case of leveraged funds, recent amendments to Federal tax laws may require the imposition of tax or arbitrage liabilities for unnecessary delays in expending SRF monies resulting from tax-exempt bonds.

III.B.4. 3) When are detailed plans and specifications required for projects receiving SRF assistance?

A: The timing is at the discretion of the SRF, in accordance with State procedures.

III.B.4. 4) Does a State have to commit to maintaining the SRF balance at a specified level?

A: No. The SRF operating procedures, however, should reflect the intent to administer fund balances "in perpetuity" for the purposes outlined in section 603(d). The SRF should maintain the fund balance in such manner as to allow achievement of the short and long term goals as identified in the Intended Use Plan (IUP).

5. First Use of Funds For Enforceable Requirements

III.B.5. 1) Can a section 212 project, identified as part of the NMP universe, include the construction of reserve capacity as a portion of the project's cost?

A: Yes. Cost-effective reserve capacity for an NMP project can be funded with first use money. Note that such funding may reduce available funds for other NMP projects.

III.B.5. 2) Do section 212 equivalency projects funded under the governor's 20% discretionary provision have to abide by the first use requirement?

A: Yes.

III.B.5. 3) Can SRF funds under the governor's 20% discretionary provision be used for nonpoint source activities before the first use requirement is met?

A: No.

III.B.5. 4) Under the first use requirement, does the repayment provision on first round loans include interest?

A: Yes, all repayments of principal and interest (if any) must first be used to assure maintenance of progress toward compliance with the enforceable requirements as defined in the Initial Guidance.

III.B.5. 5) Can a State's National Municipal Policy (NMP) list be amended?

A: Additions are not allowable unless necessary to correct an error. Deletions are possible if EPA or a State finds facilities on the NMP list that have new wasteload allocations developed as a result of new water quality standards adopted after July 1985.

III.B.5. 6) What is the definition of "have an enforcement action filed" as part of the first use requirement?

A: To meet the first use requirement, a judicial referral must be filed by the State or EPA in a court of proper jurisdiction. A judicial referral is a request by the State or EPA for a court to review a case and prepare a legally binding set of recommendations for the community to achieve compliance.

III.B.5. 7) Are State administrative orders (AOs) acceptable as an enforceable schedule required as part of the first use provision?

A: Yes, provided that noncompliance with the AO can be judicially enforced, i.e., if enforceable in the same way as a Federal AO (e.g., the State administrative order contains a compliance schedule, with specific time table for corrective actions, and noncompliance with the administrative order results in judicial action/penalties).

III.B.5. 8) What are components of an acceptable enforceable schedule?

A: As provided in guidance issued by the EPA Office of Water Enforcement and Permits, enforceable schedules

should include the following:

- Schedule should be designed to meet final effluent limits as soon as possible;
- Schedule should include sufficient milestones to allow monitoring of interim progress in achievement of final effluent limits and taking appropriate enforcement action as necessary; recommend milestones every six months;

- Court order/settlement should include penalties for previous violations and identify potential penalties for future violations.

Under a given capitalization grant, if a project fails to meet its schedule in a judicial order or administrative order, maintenance of compliance with the enforceable schedules is the responsibility of the State's municipal water enforcement program. Once the State has certified that it has met its first use requirement for a given grant, the status of compliance with the schedules has no effect on the SRF program as it enters into binding commitments.

III.B.5. 9) Can an SRF satisfy the first use requirement by providing incremental assistance for the construction of an NMP project?

A: Yes. However, the funding must substantially contribute to the facility's progress toward compliance.

6. Compliance with Title II Requirements

III.B.6. 1) An SRF may provide assistance to a project which also received construction grant funding. If the SRF assistance is for purposes which were ineligible under Title II (e.g., reserve capacity, replacements), does the assistance provided count toward satisfying the equivalency requirement?

A: Yes. If an eligible category of need exists and meets the definition of section 212, the SRF may count the assistance toward meeting its equivalency requirements. Only the amount of SRF assistance counts toward equivalency.

III.B.6. 2) If the SRF provides assistance for an initial phase or segment of a section 212 project, can the entire cost of future phases and segments count toward the equivalency requirement at the time of the initial phase or segment?

A: No, only the amount of the assistance actually provided can count toward the equivalency requirement. The cost of future phases or segments will be counted

at the time assistance is provided for them.

III.B.6. 3) Do section 212 projects funded by the SRF to count to satisfy the equivalency requirement under the governor's 20% discretionary provision have to abide by the equivalency requirement?

A: Yes.

III.B.6. 4) When will final compliance with the equivalency requirement be determined for a particular grant?

A: Ultimately, upon closeout of the capitalization grant. The closeout will be based on the final audit which must be submitted no later than one year after the last cash draw from a LOC account established as part of a capitalization grant award. Practically speaking, however, the Annual Review of an SRF will serve to evaluate progress toward meeting the equivalency requirement.

III.B.6. 5) Does the equivalency requirement still apply to section 212 projects receiving SRF assistance if a state's first use requirements are met?

A: Yes, if a State has met its first use requirements, it must still meet equivalency but only for section 212 projects receiving SRF assistance. Equivalency requirements apply to SRF assistance up to the amount of the capitalization grant unless the SRF opts to "bank" the excess balance and apply the credit to subsequent year requirements.

III.B.6. 6) Can a section 212 project not meeting the equivalency requirements receive SRF assistance prior to a section 212 project meeting the equivalency requirements?

A: Yes, so long as the State will be able to demonstrate, as part of the Annual Report process for that grant, that the equivalency requirement has been met or that progress is being made toward meeting the requirement for an amount equal to the capitalization grant.

III.B.6. 7) Can SRF assistance used for administrative costs be counted towards the equivalency test?

A: No. Although administrative costs count toward binding commitments, only section 212 treatment work

projects count toward satisfying the equivalency requirements.

III.B.6. 8) Do any of the Title II requirements apply to section 319 (non-point source) and section 320 (estuary) activities?

A: No. However, the activities must be in conformance with the appropriate non-point source or estuary management plan approved by EPA. If the 319 or 320 activity is also a publicly-owned section 212 project and is funded with designated SRF equivalency funds, it must meet Title II requirements under section 602(b)(6).

One of these Title II requirements is 201(g)(1)(B). This requirement limits funding of certain section 212 projects and nonpoint source, groundwater, and estuary activities, to be credited against the equivalency requirement, to a maximum of 20 percent of the grant. The following examples illustrate the relationship between equivalency and the Governor's discretionary fund limitation:

Project	Count toward Equivalency	Subject to 20% Cap
Lagoon	yes	no
Collector	yes	yes *
NPS BMP	no	yes *

* If funded from funds directly made available by a capitalization grant.

III.B.6. 9) How do the equivalency and other Federal authorities (cross-cutting) requirements relate to each other?

A: Both sets of requirements apply to section 212 projects funded with funds directly made available by the capitalization grant. The other Federal authorities also apply to sections 319 and 320 activities funded with funds directly made available by the capitalization grant. Neither set of requirements applies to section 212 projects or sections 319 and 320 activities funded with other SRF funds (except as noted in section III.B.11. below which discusses environmental review requirements). At the State's option, the SRF can chose to "bank" satisfaction of these requirements with other SRF funds, to be applied to future capitalization grants.

III.B.6. 10) In section 602(b)(6), what does "will be constructed in whole or in part before FY 1995" mean?

A: Any section 212 project for which a binding commitment has been made or which has initiated construction before October 1, 1994 and which the State cites as an equivalency project must comply with the Title II requirements. Title II requirements do not apply to any projects for which all binding commitments are entered into after October 1, 1994. Therefore, if an equivalency project is incrementally funded, those portions which receive funding after FY 1994 must also comply with the Title II requirements. Construction is initiated when the assistance recipient provides a notice to proceed to its contractor or when a signed contract has been executed or force account approved by the SRF.

III.B.6. 11) How does section 211 apply under Title VI?

A: Treatment works projects which are being counted to satisfy the equivalency requirements are subject to section 211. This section limits funding for new collection systems to existing communities with sufficient existing or planned capacity to treat the collected wastes. SRFs need not use the two-thirds rule developed under the construction grant program to define existing communities. Nevertheless, at least a majority of the projected flow must be from an existing community. EPA has long interpreted "existing community" as used in section 211 to mean a community in existence on October 18, 1972. This statutory interpretation is not changed under section 602(b)(6) for the SRF program. Project costs not eligible under section 211 can be funded by funds in excess of the grant amount if the equivalency requirement is met.

III.B.6. 12) Can States separately bank individual Title II requirements?

A: No. The sixteen Title II requirements are not separable; projects funded with funds directly made available by the capitalization grant must comply with all sixteen requirements.

III.B.6. 13) In expending funds directly made available by the capitalization grant for administrative costs, must the SRF

comply with Parts 31 and 32 regulations?

A: Yes. However, Part 31 requirements do not pass through to SRF assistance recipients.

III.B.6. 14) May an SRF count toward its equivalency requirement, the "banking" or "crediting" of satisfaction of equivalency requirements by projects outside of the SRF (i.e., from pre-existing State loan program)?

A: Yes, if the projects met the requirements of Title VI, including: (1) the projects, or portions of projects for which credit is sought, did not receive funding under Title II, (2) all repayments of loans from the "equivalency" portion of the projects must be deposited into the SRF, and (3) loans for which repayments are deposited into the SRF must be considered State match or excess State match and will be subject to SRF restrictions. The equivalency requirements include section 201(g)(1) which limits otherwise ineligible categories to 20 percent of the sum of the Title II and VI allotments.

III.B.6. 15) If an SRF wishes to count section 319 activities funded by the SRF in accordance with section 201(g)(1)(B) from funds directly made available by the grant toward meeting its equivalency requirement, do the sixteen equivalency provisions apply to the section 319 activities?

A: No. [Note: If a State is not funding any other section 212 projects, it may count section 319 activities toward meeting its equivalency requirement irrespective of section 201(g)(1).]

III.B.6. 16) What steps must be taken to comply with the equivalency requirements by those refinancing projects which the State identifies as equivalency projects?

A: To claim the costs of a refinanced project as an equivalency project, the State must be able to document that the project complied with the equivalency requirements, either during the project's planning/design process, or based on an "after the fact" review. The need to demonstrate compliance with the equivalency requirements cannot be waived because costs have already been incurred, environmental impacts have already been caused, or contractual obligations

were made prior to issuance of the binding commitment.

7. State Laws and Procedures

III.B.7. 1) How will the RA determine if a State is following its own laws and procedures regarding commitment and expenditure of funds?

A: The Regional Administrator will look for a certification in the State's application to follow its own laws and procedures applicable to the commitment and expenditure of funds. The Region will also look for evidence of meeting that certification during the Annual Review and audit.

III.B.7. 2) What is the role of the State in protecting the SRF from waste, fraud, and abuse?

A: As a recipient of Federal assistance under 40 CFR Part 30, the State assumes the primary responsibility for safeguarding the SRF funds. If a State determines that SRF resources might be subject to waste, fraud, or abuse, the State must follow the procedures at 40 CFR 30.610. (Note: Effective 10/1/88, Part 30 will be superseded by a new Part 31.)

III.B.7. 3) How should SRF records be maintained?

A: The State must maintain capitalization grant records and records of assistance to projects made with funds directly made available by the capitalization grant in accordance with 40 CFR Part 30.500-502. (Note: Effective 10/1/88, Part 30 will be superseded by a new Part 31.) For projects assisted with other than funds directly made available by the capitalization grant, records of SRF assistance must be maintained in accordance with applicable State laws and procedures.

8. State Accounting and Auditing Procedures

III.B.8. 1) How does the Single Audit Act apply to the SRF?

A: As a direct recipient of Federal assistance, the SRF must prepare an audit which conforms with the requirements of the Single Audit Act (SAA) and OMB Circular A-128. The SAA requires that the recipient of

Federal funds (the State) maintain an "audit trail" (itemization) of monies directly made available by the Federal grant which "pass through" to sub-recipients (SRF assistance recipients). Therefore, an SRF that receives a capitalization grant is required under the SAA to itemize the expenditures of the Fund. The SRF is not, however, required to report transactions between assistance recipients (e.g., a municipality) and their contractors (e.g., the construction firm). The SRF, however, may impose its own audit requirements on assistance recipients.

III.B.8. 2) Will completion of a single audit of the State agency fulfill the requirements of the Annual Audit of the SRF?

A: No. A single audit of the State agency is insufficient to meet the requirements of the Annual Audit required by section 606(b) of the Clean Water Act. A single audit does not include work equivalent to the financial and compliance audit of this specific fund (SRF). The SRF audit requirement can be satisfied only if the audit is performed in accordance with the auditing standards of the General Accounting Office (Standards for Audit of Governmental Organizations, Programs, Activities, and Functions, February 1981).

To the extent practicable, the Annual Audit should build on the audit work done in a single audit, if one has been performed. If it is determined that a State must conduct or arrange for an independently conducted Annual Audit, the State may have the Annual Audit done in conjunction with a single audit to minimize costs. If combined, a separate audit report would be issued for the SRF and another for the single audit.

III.B.8. 3) Do SRF accounting practices need to indicate if funds from more than one capitalization grant are used to fund specific projects?

A: No. There are no requirements for such accounting arising from the Clean Water Act. Once capitalization grant funds are deposited into an SRF, an SRF does not need to track funds by grant at the project level. As part of its Annual Report, an SRF must list those projects which were funded by an amount equal to the Federal grant payments. However, such a listing need

not identify which grant was the source of funding.

III.B.8. 4) Do SRF accounting/auditing practices need to track State match funds?

A: Yes. For auditing purposes, States should be able to account for the source and amount of State match funds attributable to specific capitalization grants.

9. Recipient Accounting and Auditing Procedures

III.B.9. 1) Does the Single Audit Act (SAA) apply to SRF assistance recipients receiving loans or other assistance from funds directly made available by the SRF capitalization grant?

A: The Single Audit Act (SAA) applies to subrecipients of funds directly made available by the capitalization grant (i.e., "equivalency projects") if the total Federal assistance which the subrecipient receives during the fiscal year is at least $25,000. The subrecipient will be subject to the SAA to the extent that it has received disbursements from the SRF, rather than the indicated assistance amount in the binding commitment. Only the amount of SRF assistance which is specifically identified as funds directly made available by the capitalization grant shall be deemed to be Federal assistance for the purposes of the SAA.

III.B.9. 2) What does the Single Audit Act require?

A: The Single Audit Act (SAA) requires the following:

- State and local governments that receive $100,000 or more a year in Federal financial assistance, shall have an audit made in accordance with OMB Circular A-128;
- State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with OMB Circular A-128 or in accordance with Federal laws and regulations governing the programs that they participate in; and
- State and local governments that receive less than $25,000 a year shall be exempt from compliance with the SAA Act and other Federal audit requirements. These States and local governments,

however, shall be governed by audit requirements prescribed by State or local law or regulations.

III.B.9. 3) Do EPA Part 31 procurement regulations apply to sub-recipients receiving assistance from the SRF?

A: No.

10. Annual Report

11. Compliance with Environmental Review Requirements

III.B.11. 1) What is EPA's responsibility under the SRF environmental review requirements?

A: EPA's responsibility will be limited to approving proposed State processes and revisions to them, conducting annual oversight, providing technical assistance when requested, providing guidance regarding compliance with the provisions of the Other Federal Authorities (i.e., "cross-cutting authorities"), and on an exceptions basis consulting with other Federal agencies under the cross-cutting authorities.

III.B.11. 2) What is the State's responsibility under the SRF environmental review requirements?

A: The State will be responsible to develop and, after EPA approval, implement the environmental review procedures. This includes, but is not limited to, documenting, making determinations on, and providing for public comment on environmental issues associated with section 212 projects receiving SRF assistance and ensuring implementation of mitigation measures.

III.B.11. 3) Must the SRF establish a two-tier environmental review process?

A: No. The Initial Guidance does not imply that States must establish two distinct sets of laws, regulations or procedures (e.g., one set for equivalency [tier one] and another for non-equivalency section 212 POTW projects [tier two]). The intent of the guidance is to allow States the option to employ different levels of

environmental review stringency to these two tiers or to apply a NEPA-like review to all 212 POTW projects.

III.B.11. 4) Can States adopt environmental determinations previously issued by EPA or another Federal agency as part of the required NEPA-like review process?

A: Yes, if: (a) the State process allows for the utilization of the Federal determination, including any associated mitigation measures and (b) either the determination is less than five years old or the State has reaffirmed the determination through an approved process updating previously issued determinations over five years old.

III.B.11. 5) Can the SRF instrumentality hire other entities (such as other State agencies, universities, or consulting firms) to do the environmental reviews on projects including EISs?

A: Yes. However, the required determinations must be signed and distributed for review by the State agency identified in the State's approved capitalization grant application.

III.B.11. 6) If an activity to be funded under sections 319 or 320 meets the definition of a section 212 treatment works, is an environmental review required?

A: Yes. If the project is to be counted toward meeting the SRF's equivalency requirement, the environmental review must be NEPA-like. If not, at least an approved alternative environmental review process is required.

III.B.11. 7) Must all alternatives considered in the planning phase beyond the selected "preferred alternative" be subjected to a State-level interdisciplinary review?

A: Yes. The State should have the interdisciplinary expertise for reviewing the preliminary alternatives to identify and evaluate all environmental concerns to ensure the selection of the preferred alternative which avoids, minimizes, or mitigates undesirable project impacts.

III.B.11. 8) What is the meaning of the statement on page D-4 of the Initial Guidance that State procedures may substitute for Federal agency coordination procedures in regard to assuring compliance with cross-cutting requirements?

A: State procedures and responsibilities relating to compliance with cross-cutting requirements are explained in a memorandum from the Acting Assistant Administrator for Water to the Regional Water Management Division Directors on September 30, 1988. States are responsible for assisting EPA in assuring compliance with cross-cutting Federal environmental authorities by reviewing a funded project for compliance under the State's environmental review process. Where an environmental cross-cutting authority requires notification and consultation with

the lead Federal agency regarding the preliminary determination under the cross-cutting authority, the State will take this action, In making a preliminary decision, the State may initiate consultation directly (1) with lead Federal agencies, (2) with State agencies delegated or designated by the lead Federal agency, or (3) through existing Federal clearinghouses at the State level. If an issue arises regarding a Federal cross-cutting law that cannot be resolved through the initial consultation process, the State must notify EPA, which will assist in resolving the issue.

III.B.11. 9) If an environmental review was not conducted on a project expected to receive SRF refinancing assistance, what steps must be taken to comply with the SERP requirements?

A: If the local debt was incurred on or after January 28, 1988 (date of issuance of the SRF Initial Guidance), an environmental review must have been completed in accordance with the SERP (i.e., NEPA-like for equivalency projects or an approved alternative process for non-equivalency projects). If the local debt was incurred before January 28, 1988 and is refinanced from funds other than those "directly made available by", an environmental review is not necessary, unless required by the State. If such a project funded prior to January 28, 1988 is to be refinanced from funds "directly made available by", prior to issuance of the binding commitment, the State must subject the project to an "after the fact" NEPA-like review. The review process must consider the impacts of the project based on the pre-building site conditions. A finding of compliance with the SERP cannot be justified because costs have already been incurred, environmental impacts have already been caused, or contractual obligations were made prior to the binding commitment.

C. Application of Other Federal Authorities

III.C. 1) Does the Brooks-Murkowski Compromise apply to the SRF program (i.e., prohibits the obligation or expenditure of Federal funds to enter into any contracts for the construction, alteration or repair of any public work or public building with any contractor or subcontractor of a foreign country or any

supplier of products from a foreign country identified as one that discriminates against U.S. firms)?

A: Yes. As of now, however, the compromise applies to only contracts and subcontracts entered into before October 1, 1988 involving the expenditure of any Federal funds. The compromise applies in the same manner as other Federal authorities to the SRF program (i.e., it applies to activities supported with funds "directly made available by" capitalization grants and the State use of such funds for program administration). (The amendment will be added to Appendix F in future editions of the Initial Guidance.)

III.C. 2) What is the relationship between the Federal environmental cross-cutters and the State Environmental Review Process (SERP)?

A: Environmental cross-cutters are reviewed under the SERP. The SERP provides only a "procedural framework" for evaluating compliance with cross-cutting requirements. The SERP should reference as appropriate other pertinent State and Federal policies, regulations, and legislation. The cross-cutting requirements apply only to projects funded by funds directly made available by the capitalization grant. Environmental cross-cutters do not apply to other section 212 projects, although the requirement for at least an alternative environmental review under a SERP remains for such projects. Compliance with State environmental cross-cutting authorities should be reviewed under such second tier process.

III.C. 3) Do Federal environmental cross-cutters apply to sections 319, 320, and SRF administrative activities?

A: Yes. Environmental cross-cutters apply to sections 319, 320, and administrative activities that receive "directly made available" funds. Environmental cross-cutters do not apply to sections 319, 320, and administrative activities that receive SRF funds beyond those directly made available by EPA's grant. (However, as a practical matter, environmental cross-cutters will have only limited applicability to administrative activities.)

III.C. 4) To what SRF activities do non-environmental (i.e., socio-economic) cross-cutters apply?

A: Non-environmental cross-cutters apply to section 212 projects and sections 319, 320 and administrative activities funded with funds directly made available by the capitalization grant. They do not apply to section 212 projects or sections 319, 320, and administrative activities that receive SRF funds beyond those directly made available by EPA's grant, except that all State administrative activities are subject to the civil rights laws, as a result of the Civil Rights Restoration Act.

III.C. 5) May a State select individual projects or activities to be subject to different Federal cross-cutters?

A: No. As a recipient of Federal financial assistance, if a project or activity is subject to the equivalency requirements or one cross-cutter, it is subject to all cross-cutters. However, if a State uses a single environmental review process to review environmental cross-cutters, non-equivalency projects reviewed for compliance with the State environmental cross-cutters need not be reviewed for compliance with Federal cross-cutters, because they are not recipients of Federal financial assistance.

III.C. 6) How will the State assure compliance with environmental cross-cutters?

A: The State can determine initially whether a project needs to comply and does comply with Federal cross-cutting requirements and take steps to assure that compliance occurs. The SERP may incorporate the initial procedural and consultative requirements of the environmental cross-cutters based on procedures developed under the delegated construction grants program or as revised for the SRF. In most cases, an initial favorable determination under the SERP and review by the appropriate State and Federal agencies will comply with the cross-cutters. However, where a protected resource (e.g., endangered species) is found to be affected by a project, the environmental cross-cutters may require additional review or consultation with lead State or Federal agencies and may also impose substantive restrictions on the use of SRF funds.

III.C. 7) How will the environmental cross-cutters be implemented for section 212 equivalency projects?

A: Implementation of environmental cross-cutters for SRF equivalency projects may be achieved through the SERP process. In the SRF program, the FNSI-like decision document regarding a project's compliance with environmental cross-cutters (or the EIS-like document) will be issued by the State under the SERP, rather than by EPA. [This is not "delegation" of EPA's NEPA authority; the State is given this authority directly by section 602(b)(6)].
In making a preliminary decision to issue a FNSI-like document or to prepare an EIS-like document, the State will "coordinate directly with lead Federal agencies identified in 40 CFR Part 6, Subpart C or utilize existing Federal clearinghouses at the State level." (See Initial Guidance, Appendix D, p. D-4) Direct project-level coordination between State SRF agencies and lead State and Federal agencies is an integral part of the SERP. EPA is developing programmatic agreements with other Federal agencies to facilitate direct coordination between State SRF agencies and lead Federal agencies.

If a lead State or Federal agency identifies a problem regarding a project's compliance with a particular cross-cutting authority that is not resolved through the consultation process, the State SRF agency would notify the EPA Regional SRF and environmental review offices. Those offices would then participate in resolving the problem. EPA retains ultimate responsibility for SRF projects' compliance with Federal cross-cutters.

III.C. 8) How will environmental cross-cutters be implemented for sections 319, 320, and administrative activities?

A: States may, at their option, choose to review sections 319, 320, and administrative activities under their SERPs. In any case, if these activities are funded with funds directly made available by the capitalization grant, their compliance with environmental cross-cutters must be reviewed by the State through some process that includes coordination with lead State and Federal agencies, just as with equivalency projects. EPA would retain a consultation role and ultimate responsibility in the event of a major unresolvable issue regarding an activity's compliance with a cross-cutter. (However, as a

practical matter, environmental cross-cutters will have only limited applicability to administrative activities.)

III.C. 9) Will EPA routinely deal directly with local assistance recipients in implementing the Federal cross-cutting authorities?

A: No. EPA and lead Federal agencies will retain responsibility for compliance, but the State will deal directly with the local assistance recipient. The State will collect and review all necessary certifications and forms from the recipients and forward them to lead Federal agencies when committing SRF funds directly made available by the grant.

III.C. 10) How will cross-cutter compliance be treated in the capitalization grant agreement?

A: EPA will require a special condition in capitalization grant agreements or a statement in the Operating Agreement in which the State assures that (1) the State and recipients of SRF assistance will comply with applicable cross-cutting Federal requirements, including those identified in Appendix F of the Initial Guidance, and (2) the State will notify EPA when consultation or coordination by EPA is necessary to resolve issues regarding those requirements and is necessary to achieve compliance.

III.C. 11) Must a project which meets the equivalency requirements that is "banked" by a State also meet the other Federal authorities requirement?

A: Yes.

III.C. 12) How often does an SRF need to report MBE/WBE compliance?

A: Based on a special grant condition that will be included in capitalization grant awards or a statement in the Operating Agreement, the State will need to agree to submit to the Regional MBE/WBE Coordinator, a completed EPA Form 334 (MBE/WBE Utilization Report) within 30 days after the end of each quarter during which the State or its subrecipients award any subagreements.

III.C. 13) How will States and assistance recipients comply with the Civil Rights Act preaward compliance requirements on SRF assistance provided from funds directly made available by the capitalization grant?

A: As agreed upon between the State and the Region, the State may, at any time before such SRF assistance is provided (i.e., execution of binding commitment), submit to the Region the completed Civil Rights preaward compliance review form prepared by SRF recipients (Form 4700-4 or subsequent versions). As in the construction grants program, the Region will continue to review the 4700-4 forms submitted by the

State. The State itself must also complete Form 4700-4 as a recipient of Federal assistance.

III.C. 14) If the Federal cross-cutting authorities were not applied to a project expected to receive SRF refinancing assistance from funds "directly made available by", what steps must be taken to comply with the Federal cross-cutting authorities?

A: To claim the costs of a refinanced project as meeting the requirements of the Federal cross-cutting authorities, the State must be able to document that the project complied with the Federal cross-cutting authorities, either during the project's planning/design process, or based on a retroactive review. A finding of compliance with the Federal cross-cutting authorities cannot be justified because costs have already been incurred, environmental impacts have already been caused, or contractual obligations were made prior to the issuance of the binding commitment.

III.C. 15) Must an SRF notify the public regarding those projects/activities which are to be funded from "funds directly made available by" so that the public is aware of its rights under the Federal cross-cutting authorities? How will the public know to contact the Federal government if violations of the Federal authorities occur?

A: Yes. The State must identify projects and activities subject to Federal cross-cutting authorities in the IUP made available for public comment.

III.C. 16) Does the Brooks-Murkowski Amendment (section 109 of PL 100-202) continue to apply to contracts awarded in subsequent fiscal years with funds obligated in FY 1988?

A: Yes. According to an Office of Management and Budget Memorandum dated January 25, 1989, the provision still applies to all funds <u>obligated</u> during FY 1988, regardless of when the contract was awarded. (For example, a community may receive funds from a State's capitalization grant which was awarded in FY 1988. The community, however, may have entered into a loan agreement with the State in FY 1989 and awarded a construction contract in FY 1990.) In the case of the SRF program, the provision would pertain to projects in

an amount equal to capitalization grants awarded during FY 1988.

III.C. 17) What is the responsibility of the State to coordinate compliance with the Federal cross-cutting authorities?

A: The State, on behalf of SRF assistance recipients, has the lead role in coordinating with Federal agencies in regard to Federal cross-cutting authorities. It is up to the State as to which State agency(ies) work with the applicable Federal agencies. As part of its capitalization grant application, the State should describe procedures and assignment of responsibilities to assure coordination with the applicable Federal agencies. Although the State has the lead in regard to coordination in the area of cross-cutting authorities, it should seek EPA assistance when necessary to achieve compliance.

III.C. 18) Do OSHA safety regulations apply to SRF funded projects?

A: Yes, but not because they are SRF funded, but because OSHA regulations apply to <u>all construction</u> projects.

III.C. 19) Do State Clearinghouses for Federal assistance (established under Executive Order 12372 and OMB Circular A-109) need to review all SRF assistance agreements?

A: No. At its option, a State may require the SRF to submit assistance agreements to the State Clearinghouse for review.

III.C. 20) Does the Prompt Payment Act apply to recipients of capitalization grants?

A: Yes, but only with regard to payment by the State to contractors or vendors for SRF administrative expenses (e.g., for services or acquisition of materials by the SRF). The Prompt Payment Act does not apply to disbursements from the SRF account to loan recipients.

III.C. 21) What procedures should SRFs use to assure compliance with the requirements of the Clean Air Act?

A: In its NEPA-like environmental review, the State

must assure that equivalency projects conform to the population projections of the State's Clean Air Act implementation plan (SIP). This should reduce the potential for violations of air quality standards that could be caused by the growth induced by the construction of POTWs. States should also assure through its approved alternative environmental review process that SRF funded projects are consistent with the SIPs, including NSPSs (New Source Performance Standards which are industry specific) and NESHAPs (National Emission Standards for Hazardous Air Pollutants which are pollutant specific).

At their option, States may streamline the conformity process by placing their SERP conformity criteria in future SIPs. Where there is a population growth inconsistency beyond what the SIP can accommodate, the State may negotiate either case-by-case emission offsets (i.e., variances) or revise the SIP. Otherwise such projects cannot be funded with funds directly made available by the Federal capitalization grant. After the expenditure of funds directly made available by capitalization grants, the only remaining SRF-imposed CAA conformity requirements are the SERP's air quality conformity procedures.

III.C. 22) How do the requirements contained in the programmatic agreement for the National Historic Preservation Act (NHPA) relate to the requirements of the Archeological and Historic Preservation Act (AHPA), the Historic Sites Act (HSA), and Executive Order 11593 on Protection and Enhancement of the Cultural Environment?

A: Although the subject matter contained in the AHPA, HSA, and EO 11593 are closely related to NHPA matters, these authorities are not administered by the Council on Historic Preservation or members of the National Council of Historic Preservation Officers with whom the PA is being negotiated. However, State SRF SERP staffs should be cognizant of the relationships and undertake similar tasks involving all four cross-cutter authorities at the same time to reduce or avoid duplicate surveys.

III.C. 23) Can someone other than a staff member of the SRF Agency be responsible for meeting the requirements of the Programmatic Agreement for the National Historic Preservation Act

(NHPA) or for other environmental cross-cutter laws?

A: Yes. Authority given to SRF Agencies in both the PA on the NHPA and in approved SERP processes allows the SRF Agency to delegate responsibilities to another State Agency with the staff expertise to discharge such

duties. However, this delegation cannot be given to a loan applicant or consultant.

III.C. 24) Does execution of programmatic agreements between EPA and other Federal agencies on environmental cross-cutters, especially those with "dispute resolution" provisions, indicate an expected higher level of Agency involvement in project level decision-making compared to the Construction Grants program under delegation?

A: No. The EPA does not anticipate any higher level involvement on individual projects than has been experienced in the Construction Grants program, and may even be less as State SRF Agencies, the Council on Historic Preservation, and State Historic Preservation Officers strengthen their working relationships under the PAs.

III.C. 25) What is the difference between the language in Attachment 6 of the National Historic Preservation Act (NHPA) Programmatic Agreement (PA) referring to "...a decision on a project..." as used in paragraph 6(C)(1) and "...final determination..." as used in paragraph 6(C)(2)?

A: Paragraph 6(C)(1) relates to any "preliminary" decision(s) made which are used in initiating consultation with lead Federal agencies, while paragraph 6(C)(2) relates to notifying the lead Federal agency of its intended action on a project taken in response to the consultation process.

III.C. 26) Do Federal Flood Insurance requirements apply to projects funded with funds directly made available by Federal capitalization grants?

A: No.

IV. APPLICATION FOR A CAPITALIZATION GRANT

IV. 1) Can a State include "contingency funds" as a separate line item in the intended use plan as part of its capitalization grant application?

A: No. All costs must be accounted for by a projected binding commitment for a specific type of Title VI assistance. If allowed by the State program, however, reasonable contingency funds may be included in the estimated project cost covered by individual binding commitments.

A. Fund Establishment, Instrumentality of the State

IV.A. 1) Can the SRF establish additional requirements for recipients beyond what is designated in sections 603(b), (c), and (d)?

A: Yes, provided the additional provisions do not conflict with the requirements of the CWA, capitalization grant agreement or other applicable Federal rules and regulations.

IV.A. 2) What action can be taken if enabling legislation for the SRF includes provisions which are inconsistent with Title VI?

A: The appropriate action will depend upon a number of factors. In general, one of the following actions may be necessary to address an inconsistency between a State's SRF enabling legislation and Title VI:

- If the legislation authorizes something that is not consistent with Title VI, but it is not mandatory, a special condition can be placed on the capitalization grant.
- If the legislation is silent about something that is required under Title VI, it can be handled in State rules, the Operating Agreement or the grant agreement.
- If the legislation prohibits something that Title VI requires or if the legislation requires something that Title VI prohibits, legislation to

revise the State law is necessary prior to capitalization grant award.

IV.A. 3) If more than one State agency will be involved in management of the SRF program, what documentation should be included as part of the capitalization grant application to describe the division of responsibilities among the agencies?

A: Memoranda of Understanding (MOUs) or similar agreements should be included as part of the capitalization grant application. If the State has opted for an operating agreement (OA), the MOUs should be attached to the OA. The MOUs should clearly delineate the division of management responsibilities among the agencies.

IV.A. 4) Must SRF enabling legislation include provisions for providing assistance to sections 319 and 320 activities?

A: No. States, however, are encouraged to include provisions in enabling legislation to engage in all activities authorized by Title VI. Such broad authorizing legislation will minimize the need to seek additional legislative action in the future if the SRF decides to offer SRF assistance to sections 319 and 320 activities.

IV.A. 5) Are State regulations required to implement the SRF?

A: No, unless required by the State to implement its program. Policies, procedures, guidelines, etc. are acceptable, providing they give the State sufficient enforceable authority to operate its SRF.

IV.A. 6) Can Indian tribes receive capitalization grants to establish SRFs?

A: No, only States are currently authorized to establish SRFs. Indian tribes, however, are eligible to receive assistance from SRFs.

B. Decision on the Use of Allotments

C. Intended Use Plan (IUP)

IV.C. 1) What does "public comment and review" mean in relation to the preparation of an IUP?

A: It means that the State must provide an opportunity for the public to review and comment on the State's IUP in accordance with State public participation requirements. The State will describe its public review and comment procedures in its capitalization grant application. At its option, a State may continue practices consistent with 40 CFR Part 25.

IV.C. 2) When does the requirement for preparation of IUPs end?

A: The SRF must prepare and submit an IUP in conjunction with each capitalization grant application. After the end of the availability of Federal capitalization grants, the SRF must continue to prepare and have public review of annual IUPs.

1. List of Projects

IV.C.1. 1) Must States continue using the Priority List after the Federal financing role ends?

A: Yes. The State's Priority List is an integral part of the process required to develop the IUP.

IV.C.1. 2) Can a State have two project priority lists -- one for assistance under the construction grant program and another for SRF assistance?

A: Yes, as long as both lists comply with the requirements of section 216. Alternatively, a State may choose to have one list that includes projects and activities under both construction grants and SRF.

IV.C.1. 3) What is the relationship between the timing of EPA acceptance of the project priority list (prepared in accordance with section 216) and development of the IUP?

A: SRF section 212 projects must be on the current priority list when the IUP is accepted by the Regional

Administrator and when the SRF makes binding commitments.

IV.C.1. 4) Must refinanced projects be listed on a State's current SRF PPL to qualify for inclusion in the IUP and subsequent SRF assistance?

A: Yes.

IV.C.1. 5) If the IUP project list includes a project from the current PPL scheduled to receive SRF financial assistance in a year after that PPL has expired, must the project appear on the PPL of the year in which financial assistance will be provided?

A: Yes, financial assistance provided through a loan agreement or other contract between the SRF and the recipient can only be provided to a project which appears on the PPL of the year in which that assistance is provided. However, the "current PPL" may be a multiyear PPL.

IV.C.1. 6) What is the definition of a "current" SRF PPL?

A: The current SRF PPL is the most recent State SRF PPL based upon a project priority system developed pursuant to section 216 of the CWA. States need not develop a new SRF priority list each year; they may develop a single multi-year SRF priority list which could be considered their current list and not need to be updated annually.

2. Short and Long Term Goals

3. Information on SRF Activities to be Supported

4. Assurances and Specific Proposals

IV.C.4. 1) What is the State's responsibility concerning the construction of oversized facilities or facilities which serve growth and development only?

A: The State must certify that it will assure compliance with Title II requirements as discussed in section III.B.6. of the initial guidance. In cases

where the State will not be following EPA regulations, it must submit its own specific procedures for ensuring that these requirements are met. One of these requirements mandates that the State assure that the facilities constructed with State Revolving Funds be cost-effective. This means, for example, that the State needs to assure that oversized facilities which cannot be effectively and efficiently built or operated are not constructed, and that facilities or portions thereof are not over-designed to serve inappropriate growth and development.

5. Criteria/Method for Distribution of Funds

IV.C.5. 1) Are States required to conduct a public hearing/meeting as part of the development of the IUP?

A: No. The State must, however, provide public notice and an opportunity for public comment and review.

D. Payments

IV.D. 1) Can the negotiated payment schedule be amended once it is part of the capitalization grant agreement?

A: Yes, so long as the last payment is received no later than the earlier of 8 quarters after the date such funds were obligated by the State or 12 quarters after the date such funds were allotted to the State.

IV.D. 2) Prior to requesting a cash draw from the Federal LOC, what should be the extent of State review of a disbursement request from a SRF assistance recipient?

A: The State has responsibility for determining appropriate review of disbursement requests.

IV.D. 3) What qualifies as a "particularly aggressive leveraging proposal"? How does leveraging affect the payments schedule?

A: A State must explain its leveraging approach as part of its capitalization grant application. States

contemplating an aggressive leveraging plan are encouraged to meet with Regional and Headquarters staff prior to submitting an application. Details as to what qualifies as a "particularly aggressive leveraging proposal" and how it affects the payment schedule can be found in the SRF Letter of Credit brochure (September 1988) published by the Office of Municipal Pollution Control.

IV.D. 4) Can States use the LOC to negotiate a bank loan to make construction loans immediately (i.e., to support interim financing)?

A: The Act says that the SRF can serve as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds. Other State debt instruments such as a bank loan are not authorized types of assistance and, therefore, cannot be secured by the SRF. Interim financing will not be required due to the use of LOCs. Loans can be made to municipalities as soon as the grant is awarded and cash draws can be made as soon as construction related costs are incurred, but before they are actually paid.

IV.D. 5) How will payments be made to the LOC?

A: The process for making payments to the LOC are explained in detail in the SRF Letter of Credit brochure (September 1988) published by the Office of Municipal Pollution Control.

IV.D. 6) If a State proposes to make binding commitments which equal 120 percent of the grant within three months of the grant award, will EPA make payments equal to the grant amount within the first quarter?

A: Yes. This assumes that in negotiation of the payment schedule, the State and the Region agree that the State can achieve its projection that quickly.

IV.D. 7) In determining the payment schedule, what date is used to determine the availability of the allotment?

A: The date of the Advice of Allowance from the EPA Comptroller.

IV.D. 8) An SRF identifies a group of projects in order to

maintain proportionality (i.e., disbursements from Federal payments and State funds). If one of these projects becomes delayed to the extent that it cannot be used to meet proportionality (e.g., construction is shutdown), can the SRF substitute another project for purposes of cash draw?

A: Yes, unless cash has been drawn for the project for which substitution is intended as prescribed on page 26 of the Letter-of-Credit Brochure, change 2. If, however, a project for which cash has been drawn is significantly delayed, then, subject to a non-monetary grant amendment, the Region and State may negotiate the substitution of another project provided that outlay commitments are not negatively impacted.

IV.D. 9) When is a project complete for purposes of loan repayments?

A: For building projects, project completion is the date operations of the treatment works are initiated, or are capable of being initiated. For planning or design projects or sections 319 and 320 activities, the State should describe its definition of project completion in its capitalization grant application.

IV.D. 10) What are incremental disbursement bonds?

A: In some States, State law or constitutions restrict local bond indebtedness. Incremental disbursement bonds (or similar techniques) allow communities to "draw down" from their estimated debt needs on a periodic basis as project costs are incurred. These bonds are generally issued by local communities and purchased by State entities which supply the needed funds.

IV.D. 11) If a State uses the group of projects method to ensure proportionality, may it switch to the all projects method after a payment and cash draw has been made?

A: Yes, a State may change to the all project method if it demonstrates, to the satisfaction of the Regional Administrator, that project(s) in the group are significantly delayed and the delay will cause an adverse impact on the fund.

To accomplish the change, the amount of cash drawn that

would have been allowed if the all projects method was initially employed must be calculated. Once the cash draw method is changed, additional cash draws may only be made if the cumulative amount that would have been allowed under the initial all project method is greater than the draws that have actually been made. (In other words, any additional draws may not cause the cumulative total of actual draws to exceed the amount allowed using the initial all project method.) Upon Regional Office approval, the State may, if necessary, substitute projects designated for purposes of cash draw tracking.

V. CAPITALIZATION GRANT AGREEMENT

V. 1) Since changes in operating agreements affect all capitalization grants awarded under that agreement, would the new requirements affect previously awarded loans (i.e., are requirements retroactive)?

A: Changes in operating agreements are intended to be applied to future SRF assistance agreements unless the Agency is statutorily directed to apply changes retroactively.

V. 2) May operating agreements have a specified termination date?

A: Yes, if mutually agreeable to the State and the Region at the time of negotiation of the capitalization grant agreement.

V. 3) Can a capitalization grant award be amended to increase the amount of the grant?

A: Yes, so long as the intended use plan is amended to reflect the revised grant amount.

V. 4) What are GAAPs and GANs (Referred to on page 29 of the Initial Guidance)?

A: GANs - Grant Anticipation Notes;
GAAPs - Generally Accepted Accounting Principles; however, inclusion of this acronym is an error in the Initial Guidance.
The correct acronym is:
GAGAS - Generally Accepted Government Auditing Standards

For more information on standards for audits of government funds received by other organizations, see the booklet Standards for Audit of Governmental Organizations, Programs, Activities, and Functions, 1988 revision, U.S. Government Printing Office.

V. 5) Do project/budget periods of capitalization grants need to conform to the Federal fiscal year?

A: No.

VI. REPORTING AND OVERSIGHT OF SRF ACTIVITIES

A. Annual Report

VI.A. 1) Do uses of SRF funds have to be accounted for separately (e.g., meeting equivalency and/or first use requirements)?

A: Yes, the Annual Report will need to show which projects satisfy the various requirements (including the costs related to each project).

VI.A. 2) How long into the future will Federal SRF reporting requirements apply?

A: Section 606 is not tied to the award of capitalization grants. The appropriate level of State reporting to EPA after the award of the last capitalization grant has not yet been determined, but is expected to be less since several requirements will no longer apply.

VI.A. 3) Will the SRF be required to include information in its Annual Report on the accomplishments of the Minority Business/Women Business Enterprise program?

A: Yes. At the time of the capitalization grant agreement, the Region and State shall negotiate a "fair share" objective for MBE/WBE participation. The State shall select certain projects or activities expected to meet this objective. To the extent that the fair share objectives are not met, the Annual Report shall include information on the progress of the selected projects or activities in meeting the fair share objectives. To report WBE/MBE accomplishments, the State should establish reporting requirements as part of its assistance agreements with recipients in accordance with Executive Order 12432.

VI.A. 4) How long does the SRF need to keep records relating to: (1) capitalization grants (e.g., development of IUP, negotiation of payment schedules, grant application and agreement materials) and (2) SRF assistance (e.g., applications, completed review checklists, environmental review materials, documentation related

to compliance with equivalency requirements and other Federal authorities, repayment records)?

A: Records relating to capitalization grants must be maintained in accordance with 40 CFR 31 and be readily available for auditors' use. Records relating to specific assistance projects must be maintained in accordance with State laws and procedures and as necessary to support Annual Reviews and audits.

B. Annual Review

VI.B. 1) Will the Grant Information and Control System (GICS) be used to maintain a national data base on capitalization grants?

A: Yes. EPA will maintain GICS as a national database. Those States which wish to use it will be allowed to.

VI.B. 2) How long into the future will EPA review requirements apply?

A: Some review requirement will continue so long as the SRF is in operation. The level of review beyond the period covered by capitalization grants has not yet been determined.

VI.B. 3) What is the EPA Headquarters (HQ) role in the annual review?

A: The conduct of Annual Reviews is a Regional Office responsibility. Headquarters will oversee Regional Office implementation of SRF activities.

VI.B. 4) Can there be a review of a State's SRF program operations during the year?

A: EPA plans to conduct reviews of State performance in the Annual Report/review/audit process prescribed in Title VI. However, if significant issues arise during the course of the year of the award (e.g., allegation of waste, fraud, abuse, or major problems with the operation of the SRF program), EPA does not preclude the potential need for interim reviews or audits.

VI.B. 5) Will EPA get involved in review of project specific issues?

A: Other than audit-related reviews, the only time EPA might review project specific issues is as part of its Annual Review of the State program. In its Annual Review, EPA will examine the management and operations of the SRF as identified in the State's Annual Report and Intended Use Plan. To determine the adequacy of a State's technical reviews of designated Title II equivalency projects, EPA may review certain documents of selected projects as provided in the Operating Agreement. The purpose of this sampling would not be to review the judgment of the State with regard to specific project-level decisions, but to evaluate the effectiveness of the State's review. The State has lead responsibility for resolving project specific issues. If questions of waste, fraud or abuse arise, however, EPA may require project level review in some cases. In conducting its audits, the Office of Inspector General may find it necessary to review recipient records. In addition, in some cases, at the request of the State or another Federal agency, EPA may participate in the review or resolution of some issues related to compliance with cross-cutting Federal authorities.

VI.B. 6) Can GICS be used by a State to maintain a data base on SRF assistance recipients?

A: Yes. EPA is committed to maintaining the availability and viability of GICS so that States may utilize it to track both Title II and Title VI activities. Additional data elements are now under consideration to make GICS more responsive to the needs of tracking SRF activities. States, however, may utilize whatever data base meets their needs for Title VI projects and activities.

C. Annual Audit

VI.C. 1) How long into the future will Federal SRF auditing requirements apply?

A: Section 606 is not tied to award of capitalization grants. The nature and extent of auditing following project administrative completions after the period covered by capitalization grants has not yet been

determined.

VI.C. 2) If States conduct audits under the SRF program, can the costs of such audits be paid for with SRF funds?

A: The State can use administrative funds from the SRF to pay the cost of complying with the audit requirements.

VI.C. 3) How will it be determined who will conduct (EPA or the State) the required annual Federal audit?

A: The EPA's Office of Inspector General (OIG) will provide Regional Administrators with a list of States from which the OIG or its representatives will be performing the required Annual Audit for the next fiscal year. The Regional Administrators, in turn, will notify each State as to whether the OIG will perform the Annual Audit or whether the State must conduct or arrange to have independently conducted audits. The accounting period for the Annual Audit will be the State's fiscal year unless the State and Regional Offices select a different accounting period.

VI.C. 4) Does the EPA's Inspector General have access to State and loan recipient records?

A: Yes. Under section 606(e) of the Water Quality Act of 1987, the Administrator has access to the records of States and loan recipients to review and determine compliance with the Clean Water Act and capitalization grant agreements. Section 6(a)(1) of the Inspector General Act of 1978 authorizes the EPA's Inspector General to have access to all records, reports, documents, papers or other materials that are available to the Administrator. The Office of Inspector General intends to perform selective audits of the efficiency, effectiveness, and compliance of the SRF program and, in the course of these audits, will require access to the records of State agencies and loan recipients.

VI.C. 5) What does the Annual Audit of the SRF require?

A: According the section 606(b) of Title VI of the Clean Water Act, "the Administrator shall, at least on an annual basis, conduct or require each State to have independently conducted reviews and audits." As such, financial and compliance audits of SRFs and its

operations are needed. The audit should be conducted in accordance with the auditing standards of the General Accounting Office (Standards for Audit of Governmental Organizations, Programs and Functions).

VI.C. 6) What audit coverage is required of local recipients of SRF assistance?

A: When a recipient of a loan or other SRF assistance is a local government, the SRF (direct recipient of Federal assistance) must ensure that the local government (subrecipient) complies with the provisions of the Single Audit Act (SAA) as it applies to the receipt of Federal financial assistance. Only funds designated by the SRF as directly made available from the capitalization grant should be considered Federal funds subject to the threshold amount which would require the local community to prepare an audit under the terms of the SAA.

D. Compliance Assurance

VI.D. 1) Can the award of a capitalization grant be "held up" pending review of a previous grant's Annual Report and Audit?

A: Yes. However, if the RA is satisfied with the State's conduct of its SRF program at the time of application for a subsequent year's capitalization grant, the subsequent year's capitalization grant can be awarded prior to the completion of the Annual Review and audit.

VI.D. 2) What payments are subject to possible withholding?

A: The possible withholding of payments is discussed on page 33 of the SRF Letter of Credit brochure (September 1988) published by the Office of Municipal Pollution Control.

VI.D. 3) How will the Regions assure that SRFs comply with Title VI requirements?

A: During the Annual Review process, the Regions will review SRF procedures and conduct spot checks of selected project files to overview compliance with

Title VI requirements.

E. Dispute Resolution

Appendix A

CROSS-INDEX OF KEY WORDS AND PHRASES

Compilation of Sets 1, 2, & 3
of the SRF Questions and Answers

Note to User: Reference to questions is indicated by section and question number (followed by a right parenthesis). The sections of the Questions and Answers document are organized consistent with the State Revolving Fund Initial Guidance issued in January 1988. References are separated by semi-colons. Multiple references in the same section are shown as a series followed by the right parenthesis. Please scan the list of keywords to find related terms of interest.

PAD
Don Niehus
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